Learned Counsel for the appellant contends that this is an incorrect method of calculation, submitting that the correct sum is $37.50 less $10.12 (i.e. $27.38) plus $2.74 being 10% to two points of decimals of $27.38; the resulting sum therefore being $30.12.

As regards the present matter the question is academic as on either calculation, having regard to the charges for electricity, water and night soil (which were in my opinion sufficiently proved in the Court below) the defendant is well within the limit imposed whichever basis of calculation is adopted.

Were it necessary to decide the point, however, I myself favour the appellant's view and think that the correct sum is $37.50 less $10.12 plus 10% of the resulting figure.

The appeal must be dismissed. There will be no order as to costs. Deposit of 150 dollars to be repaid to the appellants.

Appeal dismissed.

Solicitors: *Drew & Napier; Director of Legal Aid.*

SANDANAM v. LIM CHENG

[A. C. J. (Hepworth J.) March 26, 1960]

[Raub — Civil Appeal No. 2 of 1960]

Landlord and Tenant — Claim for possession of premises — Arrears of rent, arrears of rates and mesne profits — Jurisdiction of Sessions Court — Court Ordinance, 1948, s.70(3) — Meaning of "rent."

The plaintiff claimed vacant possession of the premises and also $980 arrears of rent plus $574.60 arrears of rates and mesne profits totalling $103.80 per month. The premises were held by the defendant under an agreement which in addition to providing for the payment by him of a monthly rental of $70.00 also provided for the payment by him of "any subsidiary charges by the Town Board in regard to the said premises." The facts not being disputed, judgment was entered against the defendant in the Sessions Court. The defendant appealed on the ground that since the money claim exceeded $1,200 and the rent exceeded $100, the Sessions Court had no jurisdiction by virtue of section 70(3) Courts Ordinance, 1948.

Held, allowing the appeal: (1) the money claim being for $1,554.60, the Sessions Court had no jurisdiction;

(2) the word "rent" in section 70(3) of the Courts Ordinance means rent from the common law point of view of something issuing out of the land for which a distress could issue.

Cases referred to:—

(1) *Sidney Trading Co.* v. *Finsbury Borough Council* [1952] 1 All E.R. 460.

(2) *Montague* v. *Browning* [1954] 1 W.L.R. 1039; [1954] 2 All E.R. 601.

(3) *Property Holding Co. Ltd.* v. *Clark* [1948] 1 K.B. 630; [1948] 1 All E.R. 165, 173.

CIVIL APPEAL from Sessions Court.

Lal Singh Muker for the appellant.

Kam Woon Wah for the respondent.

Cur. Adv. Vult.

Hepworth J.: This is an appeal by the defendant tenant against the respondent landlord from an order for possession of 94 Main Street, Kuala Lipis, made by the President of the Sessions Court, Kuala Lipis, the only ground of appeal being that the Sessions Court had no jurisdiction.

It is unnecessary to set out in detail the somewhat complicated series of events which have happened in this case. Suffice it to say that the defendant-appellant had been precluded from defending the suit under O. 10 r. 7 of the Subordinate Courts Rules, 1950, and the President's order to this effect had been upheld on appeal. Accordingly when the case came up for hearing on the 25th August, 1958, the plaintiff was formally called upon to prove his case by oral evidence under O. 19 r. 4 of the Rules.

In addition to claiming vacant possession of the premises in his Statement of Claim the plaintiff also claimed $980 arrears of rent plus $574.60 arrears of rates and *mesne* profits from the date of commencement of the proceedings to the date of judgment of $70 rent per month and $33.80 for rates per month, making a total of $103.80 per month. The premises had been held by the appellant under an agreement which in addition to providing for the payment by him of a monthly rental of $70 also provided for the payment by him of "any subsidiary charges by the Town Board in regard to the said premises".

Both counsel agreed that the facts were not in dispute, and that under the agreement a sum equal to the rates was properly payable by the tenant (appellant) to the landlord (respondent).

The question of jurisdiction had not been raised in the Sessions Court but it was now claimed on behalf of the appellant that by virtue of the claim for $1,554.60 ($980 arrears of rent and $574.60 arrears of rates) and *mesne* profits of $103.80 per month in addition to the claim for the recovery of the land, the money claim exceeded the sum of $1,200 and the rent exceeded $100 per mensem, and accordingly by virtue of the provisions of sub-section (3) of section 70 of the Courts Ordinance, 1948, the Sessions Court had no jurisdiction.

The appellant argued the appeal on the basis that the rent of the premises consisted not only of those sums of money specifically referred to in the agreement as rent but also of those sums of money specifically payable in respect of rates.

In support of his contention the appellant cited the cases of *Sidney Trading Co.* v. *Finsbury Borough Council*[1] and *Montague* v. *Browning*[2] as authority for the proposition that rent means the total monetary consideration which the tenant agrees to pay to the landlord for the grant of the tenancy. His argument is that if premises are let at say $1,200 per year inclusive of rates, that $1,200 is "rent" although some part of it represents what the landlord has to pay to the local authority. So here, he says, in substance the monetary consideration which he

agreed to pay was $70 per month plus a certain sum for rates. This, he says in effect, is what Evershed L.J. was saying in *Property Holding Co. Ltd.* v. *Clark*[3] which was quoted with approval in *Sidney Trading Co.* v. *Finsbury Borough Council, supra.*

The respondent points out, however, that the cases relied upon by the appellant are all cases connected with section 12 of the Increase of Rent and Mortgage Interest (Restrictions) Act 1920 and that the construction put on the word "rent" in those cases was for the purposes of the Rent Act and cannot, therefore, be of general application. He submitted that those cases are not in *pari materia* with the case under consideration. He also pointed out a fact of some practical significance and that was that at the end of 1954 the appellant had referred the question of the rent to the Rent Assessment Board, Kuala Lipis, and, after hearing the appellant and the respondent, the decision of the Board was that the rent of $70 per month for the premises was not excessive. It is quite clear from this that the appellant regarded the "rent" as being the sum of money specifically referred to in the agreement as rent. This does not however assist us in considering what as a matter of law the rent was in the circumstances of this case.

The respondent also argued that the words "money claim" in sub-section (3) of section 70 of the Ordinance refers to rent only and that the claim for money other than rent is covered under section 65 of the Ordinance. This is. in my view, a quite untenable proposition. Section 70 lays down the circumstances in which a claim for the recovery of immovable property can be brought in the Sessions Court, and specifies what other claims may be made in the same action. Section 65 has no application in such circumstances.

Now in the first place I do not think there is any ground for saying that the words "money claim" in sub-section (4) of section 70 refer only to rent. Under sub-section (2) there may be added in an action for the recovery of immovable property a claim for rent or *mesne* profits and for damages arising to the plaintiff from the defendant holding over or resisting his right of possession or re-entry, and for damages for breach of any covenant, condition or agreement in relation to the premises. These additional claims will be money claims and if the sum of such money claims exceeds the figure of $1,200 the Sessions Court will not have jurisdiction to entertain the action for the recovery of the immovable property. The action will then have to be brought in the High Court. And in the second place, since this is so, I think that on the facts in this case the appellant must succeed regardless of whether the word "rent" includes a sum equal to the rates which the tenant has contracted to pay to the landlord or not. Counsel has however represented to me that there are a number of appeals pending in which the point at issue is whether the word "rent" in sub-section (3) includes a sum equal to the rates where the tenant has agreed to pay such a sum to the landlord, and accordingly I will deal with this question although it is unnecessary for the purpose of reaching a conclusion in this appeal.

The cases cited by the appellant, as has been pointed out by the respondent, are cases dealing with the meaning of the word "rent" for the purposes of the Increase of Rent and Mortgage Interest (Restrictions) Act 1920 and were all concerned with whether the "rent" payable in respect of the tenancy was or was not less than two-thirds of the rateable value thereof for the purpose of ascertaining whether or not the property was subject to the Act and consequently rent controlled or not. In other words, what was sought in those cases was the construction of statutory provisions affecting the tenancy of the premises. What is sought in this case is the construction of statutory provisions, not affecting the tenancy of the premises, but affecting the jurisdiction of the Sessions Court. There is therefore in my opinion substance in the respondent's submission that those cases are not in *pari materia* with the present case.

From the common law point of view "rent" means something issuing out of the land for which a distress could issue. *Woodfall's* Law of Landlord and Tenant, 23rd Edition, page 491, says that rent is of a twofold nature, "first, as something issuing out of the land, as a compensation for the possession during the term; and, secondly, as an acknowledgement made by the tenant to the lord of his fealty or tenure." *Woodfall* goes on to say that "Rent must always be a profit; but there is no occasion for it to be, as it usually is, a sum of money: for spurs, capons, horses, corn, and other matters, may be, and occasionally are, rendered by way of rent: it may also consist in services and manual operations; as to plough so many acres of ground, and the like; which services, in the eye of the law, are profits."

I can see no reason for applying the special meaning given to the word "rent" for the purposes of the Rent Act in preference to the ordinary meaning of the word which is something issuing out of the land for which a distress could issue. Could a distress issue for the recovery by the landlord from the tenant of the sum payable under clause 4 of the agreement? I think not. I think that an application for distress under Order 30 of the Subordinate Court Rules would have to be restricted to the recovery of that sum of money which is specifically referred to in the agreement as rent. Action for the recovery of any sum equal to the rates due to the landlord from the tenant for example under clause 4 in the present case, would in my opinion have to be by way of a claim for damages for breach of a condition of the agreement. I am of the opinion, therefore, that the word "rent" appearing in sub-section (3) of section 70 of the Ordinance means rent from the common law point of view of something issuing out of the land for which a distress could issue and that, therefore, in so far as the rent of the premises in this case,

being $70 per mensem, does not exceed $1,200 per year or exceed $100 per month, the Sessions Court was not lacking in jurisdiction by virtue of the provisions of sub-section (3) on this account.

But as I have already said by adding a claim for $574.60 in respect of arrears of rates to a claim for arrears of rent amounting to $980, thereby bringing the money claim to a figure of $1,554.60, the action is taken out of the jurisdiction of the Sessions Court by virtue of sub-section (3) of section 70 of the Ordinance, and therefore the whole of the proceedings are a nullity. The appeal is accordingly allowed with costs.

Appeal allowed.

Solicitors: *Lovelace & Hastings; Kam Woon Wah & Co.*

Re KANAPATHIPILLAI & ORS.

[R. Cr. J. (Adams J.) April 29, 1960]

[Kuala Lumpur — Criminal Revisions Nos. 1 - 10 of 1960]

Road Traffic — Endorsement on licence — Disqualification — "Special reasons" — Test to be applied — Facts of each case to be considered.

Magistrates must appreciate that where there is a duty to disqualify a convicted person from holding a licence to drive a motor vehicle or to endorse such a licence with particulars of a conviction, such duty falls not within the discretion of the convicting court but is imposed by the act of the Legislature. This duty is not identified with the maximum punishment to be mitigated according to established principles. The duty is mandatory but the act of the Legislature has given a limited discretion to a convicting court, to be exercised judicially, to refrain from implementing the law's clearly expressed requirement for a reason which is special to the offence but not for a reason special to the offender.

The test to be applied in relation to those sections of the Road Traffic Ordinance which provide, on conviction of an offender, for particulars of conviction to be endorsed on the defendant's driving licence unless for any special reason the Court thinks fit to order otherwise or to order that an offender on conviction should be disqualified for a period for holding or obtaining a driving licence unless for special reason the Court thinks fit to order otherwise, is:

"A 'special reason' within the exception is one which is special to the facts of the particular case, that is, special to the facts which constitute the offence. It is, in other words, a mitigating or extenuating circumstance, not amounting in law to a defence to the charge, yet directly connected with the commission of the offence, and one which the Court ought properly to take into consideration when imposing punishment. A circumstance peculiar to the offender as distinguished from the offence is not a 'special reason' within the exception."

Cases referred to:—

(1) *Whittal* v. *Kirkby* [1947] 1 K.B. at p. 201.
(2) *R.* v. *Crossan* [1939] N.I. 106.
(3) *R.* v. *Recorder of Leicester, Ex parte Gabbitas* [1946] 1 All E.R. 615.
(4) *R* .v. *Lim Kean Soo* [1950] M.L.J. 181.
(5) *Public Prosecutor* v. *M. Karthiah* [1953] M.L.J. 52.
(6) *Public Prosecutor* v. *Mohd. Jee* [1953] M.L.J. 54.
(7) *In re A. Simon* [1954] M.L.J. 166.
(8) *Knowler* v. *Rennison* [1947] 1 K.B. 488.
(9) *Labrum* v. *Wilkinson* [1947] 1 K.B. 816.
(10) *Lyons* v. *May* [1948] 2 All E.R. 1062.
(11) *Reay* v. *Young* [1949] 1 All E.R. 1102.
(12) *Duck* v. *Peacock* [1949] 1 All E.R. 318.
(13) *Chapman* v. *O'Hagan* [1949] 2 All E.R. 690.
(14) *Jowett-Shooter* v. *Franklin* [1949] 2 All E.R. 730.
(15) *Public Prosecutor* v. *Chiam Liang Kee* [1960] M.L.J. 163.

CRIMINAL REVISION

Cur. Adv. Vult.

Adams J.: This matter was one of 10 Summons Cases brought to my attention by the learned Deputy Public Prosecutor. In all these cases the respondents had either pleaded guilty or had been convicted of the offences of driving a motor vehicle on the public road without due care and attention or without reasonable consideration for persons using the road under Section 36 of the Road Traffic Ordinance (49/58). In no case however did the learned Magistrate order the endorsement of the defendant's driving licence nor did he state what the special reason was which led him not to order the endorsement of driving licence.

It seems that Magistrates have some difficulty in appreciating what the phrase "unless for any special reason" means in relation to those sections of the Road Traffic Ordinance which provide, on conviction of an offender, for particulars of the conviction to be endorsed on the defendants driving licence unless for any special reason the court thinks fit to order otherwise or to order that an offender on conviction shall be disqualified for a period from holding or obtaining a driving licence unless for special reason the court thinks fit to order otherwise. It is most important that the meaning of this phrase should be properly understood. Not only does it appear under Section 36 but also in Section 37 in relation to disqualification after conviction for driving while under the influence of drink or drugs; in Section 38 in relation to a second or subsequent conviction for an offence of being in charge of a motor vehicle whilst under the influence of drink or drugs; and under Section 74(2) in relation to offences of driving a motor vehicle without the vehicle being insured against third party risks.

Magistrates must appreciate that where there is a duty to disqualify a convicted person from holding a licence to drive a motor vehicle or to endorse such a licence with particulars of a conviction, such duty falls not within the discretion of the convicting court but is imposed by the act of the Legislature. This duty is not identified with the maximum punishment to be mitigated according to established principles. The duty is mandatory but the act of the Legislature has given a limited discretion to a convicting court, to be exercised judicially, to refrain from implementing the law's clearly expressed requirement for a reason which is special to the offence but not for a reason special to the offender.

In *Whittal* v. *Kirkby*(1) the Court of Criminal Appeal adopted the test applied in the Northern Ireland case of *R.* v. *Crossan*(2) as to what in law